

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling to Clarify)	WT Docket No. 08-165
Provisions of Section 332(c)(7)(B) to Ensure)	
Timely Siting Review and to Preempt under)	
Section 253 State and Local Ordinances that)	
Classify All Wireless Siting Proposals as)	
Requiring a Variance)	

To: The Commission

COMMENTS OF T-MOBILE USA, INC.

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September 29, 2008

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY.....	1
DISCUSSION.....	3
I. THE FUNDAMENTAL GOALS OF THE COMMUNICATIONS ACT INCLUDE THE ENCOURAGEMENT OF WIRELESS SERVICE DEPLOYMENT AND TIMELY ACTION ON SITING APPLICATIONS.....	3
II. LOCAL GOVERNMENT WIRELESS FACILITY PERMITTING DELAYS ARE BECOMING MORE COMMON AND THWART THE CONGRESSIONAL MANDATE FOR PROMPT ACTION ON WIRELESS SITING APPLICATIONS.....	5
III. THE COMMISSION SHOULD ADOPT THE BENCHMARKS PROPOSED BY CTIA.....	9
IV. THE COMMISSION SHOULD CLARIFY THAT SECTION 332(c)(7)(B)(i) PROHIBITS ZONING DECISIONS THAT PRECLUDE ADDITIONAL ENTRANTS FROM PROVIDING WIRELESS SERVICE IN A COMMUNITY.....	13
CONCLUSION	14

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To: The Commission

COMMENTS OF T-MOBILE USA, INC.

In response to the *Public Notice* in the captioned proceeding,¹ T-Mobile USA, Inc. ("T-Mobile"),² hereby submits its comments in support of the petition for declaratory ruling ("CTIA Petition") sought by CTIA –The Wireless Association® ("CTIA").³

INTRODUCTION AND SUMMARY

Unreasonable local government regulations pertaining to the construction of new wireless towers, upgrading existing wireless facilities, and the placement of wireless transmitters on existing structures are significant obstacles to the deployment and expansion of wireless services,

¹ Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling by CTIA – The Wireless Association to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Public Notice*, DA 08-1913 (rel. Aug. 14, 2008) ("Notice").

² T-Mobile is one of the major national wireless carriers in the United States, with licenses covering 46 of the top 50 U.S. markets and serving over 31.5 million customers with a network reaching over 275 million people (including roaming and other agreements).

³ CTIA – The Wireless Association, *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165 (filed July 11, 2008) ("CTIA Petition").

and Congress amended the Communications Act of 1934 (the “Act”)⁴ to ensure the rollout of new technologies and services without delay. Unfortunately, the Congressional goal is being frustrated by inappropriate local government permitting processes. As a nationwide wireless carrier, T-Mobile has spent billions of dollars to acquire commercial mobile radio service (“CMRS”) licenses to provide wireless services to consumers. In the Advanced Wireless Service (“AWS”) auction in 2006 alone, T-Mobile paid more than four billion dollars to acquire the licenses necessary to deliver broadband service to consumers. Unless T-Mobile can expeditiously obtain local government approvals to upgrade its existing sites, build new wireless facilities, and collocate equipment on existing structures, the company’s efforts to add high-speed services and expand coverage and capacity to keep pace with subscriber demand will be significantly hampered. On a more basic level, if the local government permitting process continues to slow down, the ability of T-Mobile and other wireless carriers to build out their facilities as required by the Federal Communication Commission’s rules will be endangered.

As CTIA has demonstrated, many local government wireless permitting authorities are failing to act upon wireless tower siting applications within a reasonable timeframe and imposing other barriers to wireless siting. These trends are inconsistent with the federal mandates set forth in the Act and the regulations that the FCC has adopted to assure the expeditious provision of service. Many communities around the country have adopted a series of draconian regulations for wireless service facilities that are not imposed on any other land use within the municipality. For these reasons, T-Mobile fully supports the CTIA Petition and urges the Commission to:

⁴ Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.* (2007).

- clarify that the “reasonable period of time” within which a state or local zoning authority must take action pursuant to Section 332(c)(7)(B) is 45 days for a collocation request and 75 days for all other requests;
- declare that a zoning application will be deemed granted if a zoning authority fails to act within the relevant timeframe; and
- declare that Section 332(c)(7)(B)(i) prohibits zoning decisions that would effectively preclude an additional entrant from offering its service in an area.

DISCUSSION

I. THE FUNDAMENTAL GOALS OF THE COMMUNICATIONS ACT INCLUDE THE ENCOURAGEMENT OF WIRELESS SERVICE DEPLOYMENT AND TIMELY ACTION ON SITING APPLICATIONS

In the Act, Congress took specific steps to ensure that local zoning regulation did not hamper the deployment of wireless and other advanced telecommunications services.⁵ It revised Section 332 to impose “specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification” of wireless towers and related facilities.⁶ These limitations expressly prohibit state and local regulations that:

- discriminate among providers of “functionally equivalent” wireless services;⁷
- would prohibit, or have the effect of prohibiting, the provision of personal wireless services;⁸ and
- regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions.⁹

⁵ See *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005) (stating that Congress enacted specific provisions in the 1996 Act in order to reduce “the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers”).

⁶ *Id.* (describing the purpose of 47 U.S.C. § 332(c)(7)).

⁷ 47 U.S.C. § 332(c)(7)(B)(i)(I).

⁸ *Id.* § 332(c)(7)(B)(i)(II).

⁹ *Id.* § 332(c)(7)(B)(iv).

Congress also imposed an affirmative obligation on state and local authorities to act on wireless siting requests “within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”¹⁰ In addition, Congress required state and local authorities to issue any denials in writing and required that such denials be “supported by substantial evidence contained in a written record.”¹¹ Similarly, it created an expedited right of review for parties adversely affected by a local zoning authority’s “final action or failure to act” on wireless siting applications.¹² Finally, Congress enacted Section 253, which preempts any “State or local statute or regulation, or any other State or local legal requirement” that “prohibit[s] or [has] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”¹³

The FCC should not allow this comprehensive federal policy of encouraging the deployment of wireless and other advanced services, including prompt action on wireless siting applications, to be undermined by state or local regulations and actions that discourage deployment. Chairman Kevin Martin has stressed the importance of expediting facilities-based competition and has called for elimination of barriers to deployment at all levels of government:

Another important thing government can do is establish a stable, reliable, and fast-acting regulatory environment. In all of our governments, we ought to work to remove what I call “regulatory

¹⁰ *Id.* § 332(c)(7)(B)(ii).

¹¹ *Id.* § 332(c)(7)(B)(iii).

¹² *Id.* § 332(c)(7)(B)(v).

¹³ *Id.* § 253(a). Despite the claims of some commenters, Section 253 applies to all telecommunications services, including wireless. *Compare* City of Kasson Comments, WT Docket No. 08-165 at 1 (filed Sept. 12, 2008) *with* Federal-State Joint Board On Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 9008 (1997) (finding that “[S]ection 253 of the Act adequately preempts any state or local laws or regulations that would preclude wireless carriers from providing service to schools and libraries”).

underbrush” – burdensome regulations that may be impeding deployment. In the United States, this underbrush occurs both on the federal level and at the state and local levels. For example, states and localities impose rights of way fees, require permits for zoning and tower siting, and charge franchise fees. For new entrants in the United States, these local restrictions are some of the most cumbersome and difficult for broadband providers to navigate through.¹⁴

Commissioner Jonathan Adelstein also recently noted:

The future success of our economy will demand that we promote the expansion of communications infrastructure, as a start. The construction of communications towers is necessary to achieve the rapid deployment so many people want. Every day, Americans are expecting wider availability of advanced communications services. Towers will not only form the backbone of the transition to digital television, they are used around the clock by public safety and are a critical component of our nation’s homeland security efforts.¹⁵

As Commissioner Adelstein correctly stated, FCC grant of the CTIA Petition would help prevent unreasonable delays in rolling out advanced communications networks.¹⁶ T-Mobile urges the Commission to take such action promptly.

II. LOCAL GOVERNMENT WIRELESS FACILITY PERMITTING DELAYS ARE BECOMING MORE COMMON AND THWART THE CONGRESSIONAL MANDATE FOR PROMPT ACTION ON WIRELESS SITING APPLICATIONS

Despite the clear federal policy of facilitating wireless deployment and ensuring timely action on siting applications, the local government permitting process is getting longer – not

¹⁴ Remarks By Kevin J. Martin, Commissioner, Federal Communications Commission, before the Federal Communications Commission’s 21st Century International Communications Broadband Symposium, Washington, D.C. (May 22, 2002), *available at* <http://www.fcc.gov/Speeches/Martin/2002/spkjm206.html>.

¹⁵ Remarks of Jonathan S. Adelstein, Commissioner, Federal Communications Commission before the Fifth Annual Conference on Spectrum Management at 3 (Sept. 18, 2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285474A1.pdf.

¹⁶ *Id.*

shorter – in an increasing number of jurisdictions. CTIA reports that in the Washington, D.C. metropolitan area, collocation requests that localities generally approved in under 30 days in 2003 now take more than 90 days, and that in Ohio, the zoning process took less than three weeks in 2003 but now takes between six and eight weeks.¹⁷ T-Mobile has experienced this trend in other states: in Maryland, the zoning process generally took approximately two months in 2003, four months in 2005, and nine months in 2007, and in South Florida, the zoning process took about two months in 2005, about three months in 2006, and about five to nine months in 2007. Surely this cannot be the direction that Congress desired local zoning approvals to take when it enacted Section 332.

Wireless siting proposals can be divided into two general categories – collocation proposals that merely add additional transmitters to existing structures (such as towers and buildings) and proposals to erect new towers or substantially modify existing towers. Collocation requests should be rather straightforward because they involve adding facilities to existing structures and, therefore, do not usually have any significant aesthetic or other impact on a community.¹⁸ Moreover, given that many local ordinances require wireless carriers proposing new facilities to construct towers that are structurally capable of supporting wireless facilities for multiple carriers, the effects of collocated additions are often addressed during the initial permitting process. Unfortunately, experience demonstrates that local authorities regularly fail to act promptly on collocation requests.

¹⁷ CTIA Petition at 15-16.

¹⁸ *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas Executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation*, 16 FCC Rcd 5574, 5576 App. A (2001) (“2001 Collocation NPA”) (finding that “collocations reduce both the need for new tower construction and the potential for adverse effects . . .”).

T-Mobile agrees with the City of Airway Heights that: “[t]he fact that some applications for wireless towers are taking over a year to process is a concern that should be addressed.”¹⁹

The *status quo* is not working. Based on data compiled in June 2008, *nearly 1/3* of the approximately 706 T-Mobile collocation requests pending before local government permitting authorities across the country have been pending for more than one year. Even more alarming, approximately 114 of these requests have been pending for *more than three years*. The trend is the same for proposals involving new wireless facilities. T-Mobile has approximately 571 such requests on file of which 176 – more than 30 percent – have been pending for more than one year.²⁰ More than 25 have been pending for more than three years.

Specific examples of the unreasonable delays experienced by T-Mobile include the following:

- The City of Albuquerque, New Mexico has taken 18 months to process an application seeking approval to collocate on an existing tower, and it is virtually impossible for new towers to get approved. T-Mobile filed an application in August 2007 proposing a new tower, and, although not required by ordinance, the City of Albuquerque (i) required that T-Mobile meet with a facilitator, and (ii) held an open meeting and solicited participation by surrounding homeowner associations. More than one year later, the application has not been acted on.²¹
- In Santa Fe, New Mexico, it typically takes 18 to 24 months to process siting applications due to cumbersome and unnecessary procedural hurdles. A carrier is required to submit a proposal to the city’s Planning Department, which is followed up by a pre-application meeting with planning staff, and an outline of the steps involved is provided by staff. Each procedural step imposed by the staff

¹⁹ City of Airway Heights Comments, WT Docket No. 08-165 at 2 (filed Sept. 12, 2008).

²⁰ This issue is not limited to a handful of jurisdictions or a few states. As of this month, applications remained pending after more than one year in jurisdictions within eighteen states: Arizona, California, Connecticut, Florida, Illinois, Idaho, Massachusetts, Maryland, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York, Rhode Island, Utah, Virginia, and Washington.

²¹ See Declaration of Christopher Eldridge, Regional Development Director, West Region, T-Mobile at 2 (attached).

takes between four and seven months to complete. And then, three to four more months are required to get on the agenda in Santa Fe to consider whether the steps have been satisfied.²²

- In Maricopa County, Arizona, the typical timeline for zoning decisions is 12 to 18 months. As in Santa Fe, the process starts with a mandatory “pre-application meeting,” after which an application may be filed. Once the application is filed, a Technical Advisory Committee hearing must be scheduled and conducted, followed by a planning and zoning hearing, and finally a hearing before the Board of Supervisors. Each step requires three to four months. Moreover, even if a zoning approval is granted during the Building Permit stage, the process is not complete. At that point, the entire application is sent back to the planning department for an additional review to see if the city may desire to change its decision based on any new factors.²³
- Scottsdale, Arizona is another jurisdiction that requires a “pre-application meeting” before an application is accepted and it takes three months to schedule such a meeting. After the pre-application meeting, the applicant may file an application for a Conditional Use Permit, which then requires a hearing before a Design Review Committee. Once that process is complete, a wireless siting applicant must then schedule a hearing before the Planning and Zoning Committee. The final step is to schedule and conduct a hearing with the City Council. At any stage, and for any reason, a city planner can recommend the process be stopped and recommenced from the beginning. T-Mobile has sought approval to collocate on an existing utility company lattice tower that already has a wireless facility on it. Over a two-year period, the city has sent the application back to the beginning of the process three times and refuses to move forward and make a final determination.²⁴
- In Palm Beach County, Florida, the local government requires multiple pre-application meetings before they will accept an application. It is not uncommon for the pre-application process to drag on for three or four months before it is concluded and the application is deemed “submitted” for purposes of commencing the actual review process.²⁵
- In Amherst, New York, T-Mobile sought approval to collocate an antenna on an existing monopole specifically designed to accommodate multiple carriers. No

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 2-3.

²⁵ See Declaration of Jared Ledet, Regional Development Director, South Region, T-Mobile at 2 (attached).

structural modification was required or proposed for the structure. Nevertheless, the application has been pending for more than one year.²⁶

These examples illustrate that Congress' intent to ensure prompt action on wireless siting applications is being frustrated by zoning processes that are becoming increasingly more time-consuming, with action often being delayed for inappropriate reasons.

III. THE COMMISSION SHOULD ADOPT THE BENCHMARKS PROPOSED BY CTIA

Given the record evidence demonstrating that the wireless siting process is becoming longer, not shorter as envisioned by Congress, the Commission should adopt the benchmarks proposed by CTIA for final action on siting applications.²⁷ Section 332(c)(7)(B)(ii) requires local authorities to act on wireless siting applications within a "reasonable period of time."²⁸ Section 332(c)(7)(B)(v), in turn, establishes an expedited right to judicial review of any denial or failure to act on a wireless siting application.²⁹ Notwithstanding these seemingly clear Congressional directives, it appears that FCC guidance is necessary. As CTIA makes clear, the uncertainty regarding the timeframes in which local authorities must act has put siting applicants in an untenable take-it-or-leave-it position:

They can endure further delay in the futile hope that action will be forthcoming and possibly miss the 30 day window to "commence an action in any court of competent jurisdiction." Alternatively, they can incur the substantial costs and additional time associated with initiating litigation, risking a judicial determination dismissing the suit on the basis that insufficient time has passed for

²⁶ See Declaration of Sabrina Bordin-Lambert, Interim Regional Development Director, Northeast Region, T-Mobile at 2 (attached).

²⁷ Commission action also is necessary given the conflicting approaches taken by the courts. See generally Jeffrey Silva, *Tower Industry Rulings Ping Pong in Courts*, RCR Wireless, Sept. 25, 2008, at <http://www.rcrwireless.com/article/20080925/WIRELESS/809249995/-1/carrier#>.

²⁸ 47 U.S.C. § 332(c)(7)(B)(ii).

²⁹ *Id.* § 332(c)(7)(B)(v).

the siting authority to have “fail[ed] to act.” By withholding action on siting requests, states and localities have been able to evade the judicial oversight contemplated by 332(c)(7), and to disturb the balance of state, local and federal power envisioned by Congress.³⁰

To achieve Congress’ goal of encouraging the rollout of new technologies without delay,³¹ the Commission should issue a declaration setting forth timeframes within which state and local zoning authorities must act on zoning requests.³² The timeframes proposed by CTIA are reasonable and consistent with the intent of the Act.

Rather than propose a one-size fits all approach, CTIA recognizes that the length of the local government permitting process will vary depending upon whether a request involves a new tower or a collocation on an existing facility.³³ Collocations should be defined as proposals that would add antennas to an existing structure – such as a tower, rooftop, water tank, *etc.* – without substantially increasing the size of the structure. The definition of a “substantial increase in size” should be modeled after the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas³⁴ as follows:

³⁰ CTIA Petition at 20 (internal citations omitted).

³¹ See *Rancho Palos Verdes*, 544 U.S. at 115.

³² The Commission is entitled to issue such an interpretation pursuant to Section 201(b) of the Act which states: “[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.” 47 U.S.C. § 201(b); see *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 377-380 (1999) (discussing Section 201(b) in the context of local competition rules); *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 545 U.S. 967, 980-81 (2005) (“*Brand X*”).

³³ CTIA Petition at 24-27.

³⁴ See 2001 Collocation NPA, 16 FCC Rcd 5577 (defining “substantial increase in the size of the tower”). A proposal to place an antenna on the roof of an office building should not require the same processing time associated with the construction of a 200 foot tower. Under the proposed approach, the placement of a 10 foot antenna on the roof of a 100 foot tall office building would be subject to the 45 day period for zoning review proposed for collocations. Proposed antennas that would increase the overall height of a structure by more than 10 percent, however, would be subject to the longer 75 day deadline.

“Substantial increase in the size of a structure” means:

- 1) The mounting of the proposed antenna would increase the height of an existing structure by more than 10%, or by the height of one additional antenna array in excess of twenty feet, whichever is greater; or
- 2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) The mounting of the proposed antenna would involve adding an appurtenance to the existing structure that would protrude from the edge of structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- 4) The mounting of the proposed antenna would involve excavation outside the current site, defined as the current boundaries of the leased or owned property surrounding the structure and any access or utility easements currently related to the site.

A 45-day period for rendering decisions on collocations is reasonable.³⁵ Such applications should not require the same scope of review associated with a new facility. In fact, some jurisdictions within T-Mobile’s footprint have rendered decisions approving collocation applications within one day, and many other jurisdictions render decisions within 45 days.

T-Mobile also supports CTIA’s proposal that “the failure to render a final decision on any other, non-collocation wireless siting application within 75 days constitutes a failure to act for purposes of Section 332(c)(7)(B)(v).”³⁶ This timeframe is one month longer than the period for collocations and should provide more than enough time to evaluate the proposal and conduct

³⁵ See CTIA Petition at 24-25.

³⁶ CTIA Petition at 25-26.

any necessary public notice and hearings. In some localities in Florida, Georgia, and Texas, T-Mobile has been able to complete the review process and receive a final decision on a new wireless facility in five weeks or less. In those same areas, the average amount of time associated with the zoning process is 60 days or less – well below the proposed benchmark.

T-Mobile supports use of the *Franchising Order* model to address failures to comply with the benchmarks.³⁷ In the *Franchising Order*, the Commission stated that “[i]n order to encourage franchising authorities to reach a final decision on a competitive application within the applicable timeframe set forth in this Order, a failure to abide by the Commission’s deadline must bring with it meaningful consequences” and therefore concluded that if the local authority did not render a decision within the specified timeframe, the application would be deemed granted.³⁸ The same approach is warranted here. The record demonstrates that many jurisdictions do not act promptly on wireless siting applications despite clear Congressional intent. Adoption of a “deemed granted” approach would incent these jurisdictions to act quickly which will facilitate the delivery of services to the public.

³⁷ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2007) (“*Franchising Order*”) *aff’d* *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008); *see* CTIA Petition at 27-30.

³⁸ *Franchising Order*, 22 FCC Rcd at 5138-39.

IV. THE COMMISSION SHOULD CLARIFY THAT SECTION 332(c)(7)(B)(i) PROHIBITS ZONING DECISIONS THAT PRECLUDE ADDITIONAL ENTRANTS FROM PROVIDING WIRELESS SERVICE IN A COMMUNITY

As demonstrated in CTIA's petition, there is substantial disagreement among the courts regarding the preemptive effect of Section 332(c)(7)(B)(i)(II).³⁹ By its plain terms, this statutory provision bars state and local zoning authority decisions that "prohibit or have the effect of prohibiting the provision of personal wireless services."⁴⁰ Some courts have interpreted this provision to apply on a carrier-specific basis – if the denial of the wireless siting application would preclude the carrier from providing service in the area, the decision would be preempted.⁴¹ Other courts, however, have interpreted this Section to apply only to decisions rendered by communities that do not currently have wireless service such that the denial of the wireless siting application would prevent service from being extended into the community.⁴² This overly narrow interpretation has been rejected by most reviewing courts because it is inconsistent with Congressional intent and the objectives of the Act. Allowing localities to deny applications from

³⁹ See CTIA Petition at 30-35 (citing *Metheny v. Becker*, 352 F.3d 458, 461 n.2 (1st Cir. 2003) (finding that "a provider is not precluded from obtaining relief under the Act simply because some other provider services the gap in question"); *Omnipoint Communications, Inc. v. City of White Plains*, 430 F.3d 529, 536 n.3 (2d Cir. 2005) (stating that "[i]t is unsettled whether, under the [Act], a coverage gap must be measured from the perspective individual provider ... or the perspective of users") (internal quotes removed); *MetroPCS, Inc. v. City & County of San Francisco*, 400 F.3d 715, 729 n.6 (9th Cir. 2005) (stating that "[f]ar from prohibiting zoning decisions based on redundancy ..., the [Act] itself appear[s] to be totally agnostic on this issue"); *AT&T Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 428-29 (4th Cir. 1998) (finding that only a blanket ban on *all* tower siting would violate Section 332(c)(7)(B)(i)(II))).

⁴⁰ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁴¹ See, e.g., *Metheny*, 352 F.3d at 461 n.2.

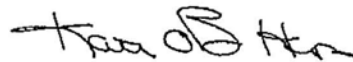
⁴² *APT Pittsburgh Ltd. Pshp. v. Penn. Township Butler County*, 196 F.3d 469, 480 (3d Cir. 1999); see also *Nextel W. Corp. v. Unity Township*, 282 F.3d 257, 265-66 (3d Cir. 2002) (citing same); *AT&T Wireless PCS, Inc. v. City Council of Va. Beach*, 155 F.3d 423, 428-29 (4th Cir. 1998); *USCOC of Va. RSA No. 3 v. Montgomery County Bd. of Supervisors*, 343 F.3d 262, 268 (4th Cir. 2003) (citing same).

all but the first carrier to serve an area would undermine the further development of a “pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”⁴³ To preserve Congressional intent, the Commission should clarify that Section 332(c)(7)(B)(i)(II) bars zoning decisions that would preclude a carrier from extending service into an area it does not currently serve, regardless of whether the area is already served by another provider.

CONCLUSION

For the foregoing reasons, the Commission should issue the declaratory ruling sought by CTIA and (i) clarify the time period in which a state or local zoning authority must take action on a wireless facility siting request under Section 332(c)(7)(B), (ii) declare that a failure to act within the relevant timeframe will result in the application being deemed granted, and (iii) clarify that Section 332(c)(7)(B)(i) bars zoning decisions that have the effect of prohibiting a particular provider from offering service in a given area.

Respectfully submitted,



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⁴³ H.R. Conf. Rep. No. 104-458 at 1 (1996), reprinted in 1996 USCCAN 10. See *APT Pittsburgh Ltd. P'ship*, 196 F.3d at 473 (quoting same); *Rancho Palos Verdes*, 544 U.S. at 115.

DECLARATIONS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of) WT Docket No.: 08-165
)
Petition for the Declaratory Ruling to)
Clarify provisions of Section 332(c)(7)(B)) DECLARATION OF CHRISTOPHER ELDRIDGE
to Ensure Timely Siting Review and to) IN SUPPORT OF THE WIRELESS ASSOCIATION TO
Preempt under Section 253 State and Local) CLARIFY PROVISIONS OF SECTION 332(C)(7)(B)
Ordinances that Classify All Wireless) TO ENSURE TIMELY SITING REVIEW AND TO
Siting Proposals as Requiring a Variance) PREEMPT UNDER SECTION 253 STATE AND LOCAL
) ORDINANCES THAT CLASSIFY ALL WIRELESS
) SITING PROPOSALS AS REQUIRING A VARIANCE

I, Christopher Eldridge, declare as follows:

1. I am the Regional Development Director, West Region for T-Mobile USA, Inc. I submit this declaration in support of CTIA - The Wireless Association's request to clarify provisions of Section 332(c)(7)(B) to ensure timely siting review and to preempt under Section 253 state and local ordinances that classify all wireless siting proposals as requiring a variance ("Petition"). In my capacity as Regional Development Director, I am responsible for the wireless facility siting efforts for California, Nevada, Washington, Oregon, Utah, Hawaii, Arizona and New Mexico ("West Region").
2. In such capacity, I conduct regularly scheduled meetings to advise and monitor the development wireless sites and review siting difficulties that impact the T-Mobile build plan.
3. Information gathered from the individual T-Mobile markets shows that siting regulation has become increasingly more complex and time consuming. The local zoning approval process remains a substantial impediment of the deployment of wireless services in many areas. Below are some of the challenges T-Mobile has faced.

1 4. In the City of Albuquerque, New Mexico, the typical timeline is over one
2 year for a colocation and virtually impossible for any other type of facility to be
3 installed. For one raw land site, T-Mobile filed an application and, although not
4 required by ordinance, the City of Albuquerque requested T-Mobile meet with a
5 facilitator, hold an open meeting and invite surrounding homeowner associations,
6 thereby creating an extremely time-consuming permitting process.

7 5. In Santa Fe, New Mexico, the typical timeline for zoning applications is
8 18 to 24 months. Since most of Santa Fe falls into a historic overlay district, there
9 a several processes that must be followed. First the application is submitted to the
10 city's Planning Department. A pre-application meeting is then held with planning
11 staff, and an outline of the steps involved is provided by staff. The steps can be
12 from as few as 4 months to as long as 7 months depending on the number and type of
13 overlay districts. Each step in the process takes 3 to 4 months to get on a calendar
14 agenda with all meetings being public hearings. Santa Fe encourages concealed sites.
15 Despite concealing the facilities, there is strong opposition from the local citizens
16 who come in large numbers to oppose all applications regardless of whether in the
17 applications would affect their neighborhoods or the sites are concealed.

18 6. In Maricopa County, Arizona, the typical timeline for zoning decisions is
19 12 to 18 months for a yes or no answer. The process starts with a pre-application
20 meeting. Next an application may be filed, a Technical Advisory Committee (TAC)
21 hearing must be scheduled and conducted, a planning and zoning hearing must be
22 scheduled and conducted and finally a hearing before the Board of Supervisors must be
23 scheduled and conducted. Each step requires three to four months. If a zoning
24 approval is granted, during the Building Permit stage, the entire application is again
25 sent back to the planning department for an additional review to see if the city may
26 desire to change their decision based on any new factors.

27 7. In Scottsdale, Arizona it takes 3 months to schedule a pre-application
28 meeting which is required before an application is accepted. After the pre-
application meeting, the applicant may file for a Conditional Use Permit (CUP) and

1 schedule and conduct a hearing before a Design Review Committee. An applicant must
2 then schedule and conduct a hearing before the Planning and Zoning Committee. The
3 final step is to schedule and conduct a hearing with the City Council. At any stage
4 and for any reason a city planner can recommend the process to stop and start over. T-
5 Mobile has one site application in for a colocation on a utility company lattice tower
6 that already has one wireless facility on it. The city has sent the application back
7 to the beginning three times over a period of 24 months and refuses to hear the case
8 and make a final determination.

9 8. In Pima County, Arizona, T-Mobile has applied for three applications over
10 a five-year period for the site within the same search ring. The County has returned
11 two applications with suggested relocations which are not possible due to Landlord
12 restrictions and has denied the third application. This site is currently under
13 judicial appeal.

14 9. In Glendale, Arizona, the application process takes 6 to 16 months to
15 reach a yes or no vote for a wireless facility. A city planner may continue to delay
16 placing the application on the agenda for a hearing for based on their own urgency or
17 work load. If city planners are backlogged with other applications, they simply delay
18 working on wireless facilities.

19 10. In the County of Los Angeles, California, it takes as long as 16 months
20 to process a new site application and as long as 14 months for a colocation request.

21 11. In the City of Gardena, California, it took two years to get a denial on
22 a setback variance which had no effect on the neighboring sites nor health and safety
23 of the neighborhood. Through litigation, T-Mobile was able to build its site.

24 12. In the City of Los Angeles, California it may take 7 months for approval
25 of a facility in the public right of way on a joint utility pole used for other types
26 of utilities.

27 13. In the City of San Francisco, California, a conditional use permit may
28 take over 12 months to process.

15. In the Counties of Santa Cruz, San Mateo and Monterrey, California, it will take between 12 to 18 months from application to final hearing for a conditional use permit.

16. In the City of Seattle, Washington it took over 24 months for a wireless facility approval on a utility pole.

17. In Washington State Counties of Kitsap, and Whatcom and the Cities of Federal Way and Lynnwood it has taken over 12 months for approval of application.

18. In the Pierce County, Washington it will take between 10 and 12 months from application to building permit issuance.

19. In Jefferson County, Washington it will take between 11 and 12 months from application to building permit issuance.

20. There are jurisdictions within the West Region that do have acceptable application timeframes which demonstrate the ability of local jurisdictions to process wireless applications appropriately. For example, the City of Buena Park, California processed an application for a conditional use permit with a variance in 3 months. In Redondo Beach, California, a permit for a rooftop installation took only 2 months. In the City of Anaheim, California, a permit took only 4 days for approval.

Executed this 22 day of September, in Concord, California.

Conf Elph

Christopher Eldridge

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

) WT Docket No.: 08-165

In the Matter of)
Petition for the Declaratory Ruling to)
Clarify provisions of Section 332(c)(7)(B)) DECLARATION OF JARED LEDET
to Ensure Timely Siting Review and to) IN SUPPORT OF THE WIRELESS ASSOCIATION TO
Preempt under Section 253 State and Local) CLARIFY PROVISIONS OF SECTION 332(C)(7)(B)
Ordinances that Classify All Wireless) TO ENSURE TIMELY SITING REVIEW AND TO
Siting Proposals as Requiring a Variance) PREEMPT UNDER SECTION 253 STATE AND LOCAL
ORDINANCES THAT CLASSIFY ALL WIRELESS
SITING PROPOSALS AS REQUIRING A VARIANCE

I, Jared Ledet, declare as follows:

1. I am the Regional Development Director, South Region for T-Mobile USA, Inc. I was recently appointed to this position. I submit this declaration in support of CTIA - The Wireless Association's request to clarify provisions of Section 332(c)(7)(B) to ensure timely siting review and to preempt under Section 253 state and local ordinances that classify all wireless siting proposals as requiring a variance ("Petition"). In my capacity as Regional Development Director, I am responsible for the wireless facility siting efforts for North and South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Oklahoma, Missouri, Mississippi, Louisiana, Arkansas, and Texas ("South Region").

2. In this capacity, I conduct regularly scheduled meetings to advise and monitor the development wireless sites and review siting difficulties that impact the T-Mobile build plan.

3. Information gathered from the individual T-Mobile markets shows that siting regulation has become increasingly more complex and time consuming. The local zoning approval process remains a substantial impediment to the deployment of wireless

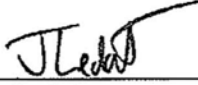
1 services in many areas. Below are some of the challenges T-Mobile has faced in the
2 South Region.

3 4. In Palm Beach County, FL, the local government requires repeated pre-
4 application meetings before they will accept an application. It is not uncommon to
5 expend 90 to 120 days before an application is deemed complete so that the local
6 government may then begin its review process. The local government requires a 30 day
7 interval between each submission, and carriers often experience seriatim
8 determinations requiring additional written materials to be submitted to complete an
9 application.

10 5. Seabrook, Texas is about 90% residential. Towers can be sited in only the
11 industrial area, a very small portion of the community. Additionally, the municipality
12 is reluctant to even accept applications, and take a very long time to schedule
13 applications for hearings.

14 6. In Texas City, Texas, T-Mobile has been advised that no new towers will
15 ever be allowed. In one instance, the city took four months to determine the process
16 necessary to consider an application, then the application was reviewed and re-
17 viewed several times over more months. The process, once defined, is changed over
18 the course of these reviews, and does not comply with the written code. Meetings are
19 scheduled and are not conducted as advertised; for example, we might expect a hearing
20 with a recommendation, and go to the meeting only to find out the meeting is simply a
21 workshop type hearing.

22 Executed this 18th day of September, in Frisco, Texas.

23
24 
25 _____
Jared Ledet
26
27
28

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Petition for Declaratory Ruling to Clarify)	
Provisions of Section 332(c)(7) to Ensure)	
Timely Siting Review and to Preempt under)	WT Docket 08-165
Section 253 State and Local Ordinances that)	
Classify All Wireless Siting Proposals)	
As Requiring a Variance)	

DECLARATION OF SABRINA BORDIN-LAMBERT

1) My name is Sabrina Bordin-Lambert. My business address is 4 Sylvan Way, Parsippany, NJ 07054. I am employed by T-Mobile as Interim Regional Development Director responsible for overseeing T-Mobile's engineering and development activities in the Northeast Region.

2) T-Mobile's Northeast Region consists of all or portions of the following geographic territories: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia.

3) The purpose of this declaration is to discuss information contained in above captioned petition of CTIA – The Wireless Association® ("CTIA"), relative to instances of unreasonable delay in wireless siting applications.

4) In late 2007 and again in mid 2008, CTIA sought and T-Mobile provided information pertaining to T-Mobile's wireless portfolio, pending wireless siting applications, local permitting time-periods for processing wireless siting applications and specific examples of egregious delays in the wireless facility siting process.

5) The following shall serve as specific representative examples of unreasonable delay, as experienced by T-Mobile in the Northeast Region:

- i. In Waltham, MA delays averaging six (6) to twelve (12) months are customary for wireless facility proposals. The City employs a pre-qualification process entitled "Perspective" review, which requires departmental head sign-off from fourteen (14) different agencies including – superintendent of schools and head of library, before a special permit application is formally considered for review by the City Council (the permit granting authority). A three

(3) month period for Perspective review is typical, followed by a three (3) to nine (9) month application review period with City Council.

- ii. In Tewksbury, MA T-Mobile spent four (4) years attempting to service a gap in wireless coverage. After filing numerous applications, while a judicial appeal was pending, the local zoning board directed filing and granted approval (2008) at a location that was the subject site of a prior denial with substantially similar design. A summary of the above referenced four (4) year period is as follows: the local zoning board considered four (4) applications and issued three (3) denials between two (2) sites; during the pendency of applications, the town enacted a twelve (12) month moratorium and followed with the adoption of a comprehensive wireless ordinance. Following adoption of the town's comprehensive wireless ordinance, the local zoning board directed refilling of an application that was previously denied – only to receive subsequent denial. T-Mobile appealed this denial. During the pendency of the lawsuit the local zoning board directed us to file a new application at the initial (2004) location, which required a new lease and application, before approval was finally granted.
- iii. In Littleton, MA following a two (2) year delay, the Town denied a permit on privately owned land with the demonstrable intent both by regulation and statement that it will only allow wireless facilities on town owned property. (All other wireless sites in this community are on town owned lands). Initial efforts to secure municipally owned property were rejected. A judicial appeal is currently pending.
- iv. In Yonkers, NY collocation applications take a *minimum* of six (6) months for review. The city employs a municipal consulting firm to assist in the review of wireless telecommunications applications.
- v. In Amherst, NY a collocation application remains pending for more than one (1) year. The existing monopole was designed to accommodate multiple carriers and no structural modification is required for the proposed installation. The municipality employs a consultant to assist in the review of wireless telecommunications applications.

- vi. In LaGrange, NY a collocation application was denied following a three (3) year review process. The existing tower in which T-Mobile is seeking to co-locate was designed to accommodate multiple carriers and no height increase is needed to hold the proposed installation. A judicial appeal is currently pending. *It is important to note that the collocation structure, which was designed to accommodate multiple carriers, was originally approved through settlement of litigation between the town and another wireless carrier. That carrier is currently operating on the tower.
- vii. In Ramapo, NY T-Mobile recently filed a lawsuit asserting, *inter alia* – claims of unreasonable delay pursuant to 47 USC §332(c)(7)(B)(ii). The application was pending for twenty-two (22) months, over the course of sixteen (16) public hearings with no end in sight. A judicial appeal is currently pending.
- viii. In Princeton, NJ a rooftop installation on a university building recently encompassed eleven (11) months from filing to approval. A typical application review process entails the following: staff review, followed by Site Plan Review Advisory Board review and finally Regional Planning Board, which considers all land use applications to include wireless telecommunications facilities.
- ix. In Waldwick, NJ after a nineteen (19) month application review process which began in 2006 and included six (6) public hearings, the local zoning board denied a conditionally permitted stealth flagpole in the Borough's commercial zoning district. A Bergen County Superior Court overturned the denial and granted all necessary approvals for the facility, without remand.
- x. In West Whiteland, PA an application for a conditionally permitted monopole on a large private parcel underwent a two and a half (2 ½) year review process. The local government required extensive and multi-layered reviews from several groups, including: Planning Commission, Board of Supervisors, Historical Review Board, as well as requiring land development approval.

6) Several jurisdictions throughout the Northeast Region reach final decision on wireless applications in a reasonable period of time, without overburdening the process. This demonstrates the ability of local governments to timely process wireless applications; unfortunately, however, in a growing number of jurisdictions throughout the Northeast Region, T-Mobile is experiencing extended and often protracted periods of review.

7) These significant delays thwart the efforts of wireless carriers to meet the growing needs of customers to stay connected with their children, family members, friends, business associates, and, most importantly, their critical need to reach public safety agencies with their cell phones. As evidenced by the representative examples above, the delays can unnecessarily drag out the siting process for many years even when the application is for collocation on an existing structure that may have other wireless competitors already attached.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 19th day of September, 2008 in Parsippany, New Jersey.



Sabrina Bordin-Lambert